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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Conduct a Comprehensive Examination of Investor Owned Electric Utilities' Residential Rate Structures, the Transition to Time Varying and Dynamic Rates, and Other Statutory Obligations.	Rulemaking 12-06-013 (Filed June 21, 2012)

JOINT REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U39M), SAN DIEGO GAS AND ELECTRIC (U902E), AND SOUTHERN CALIFORNIA EDISON (U338-E) ON PROPOSED DECISION REGARDING CERTAIN PUBLIC UTILITIES CODE SECTION 745 ISSUES

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I. INTRODUCTION

Pursuant to Rule 14.3(a) of the California Public Utilities Commission's (CPUC's or Commission's) Rules of Practice and Procedure, San Diego Gas and Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), and Southern California Edison Company (SCE) (collectively, the Joint Utilities or IOUs) [1] jointly file these comments in reply (Joint Reply Comments) to the Opening Comments filed by four other parties[2] on the Proposed Decision (PD) of Administrative Law Judge (ALJ) Jeanne McKinney dated August 11, 2016 in the above-referenced proceeding.

II. THE PD'S DEFINITION OF "ECONOMICALLY VULNERABLE CUSTOMERS" UNDER SECTION 745(C)(2) SHOULD NOT BE EXPANDED

TURN, CforAT, UCAN and CFC argue that the PD errs by limiting the definition of "economically vulnerable customers" to those customers who are ***enrolled*** in the California Alternate Rates for Energy (CARE) or Family Electric Rate Assistance (FERA) programs.[3] They assert that, at a minimum, the Commission must define all customers who are ***eligible*** for the CARE/FERA programs as economically vulnerable even if such customers are not enrolled in these Commission-approved limited-income assistance programs.

The Joint IOUs disagree. The fundamental purpose of defining economically vulnerable customers, is to enable the CPUC to obtain the information it needs to study the impact of TOU rates on economically vulnerable customers as defined for this purpose, "to ensure that these customers do not experience unreasonable hardship

[1] Pursuant to Rule 1.8(d) of the Commission's Rules of Practice and Procedure, SDG&E has been authorized by SCE and PG&E to file these Joint Reply Comments on their behalf.

[2] Four parties, in addition to the Joint IOUs, filed Opening Comments: The Utility Reform Network (TURN), the Center for Accessible Technology (CforAT), the Utility Consumers Action Network (UCAN), and the Consumers Federation of California (CFC).

[3] *See, e.g.,* Comments of the Utility Reform Network on the Proposed Decision on the Requirements of Section 745, pp. 3-7; CforAT Opening Comments, beginning at p. 6.

caused by default TOU rates."[4] Because Section Public Utilities (P.U.) Code 745(c)(2) (Section 745) left definitional gaps (just like all other terms at issue in this PD), the Commission must rely on its experience and judgment, considering factors such as feasibility, practicality, and administrative costs, in defining "economically vulnerable customers." The PD reasonably concludes that customers ***enrolled*** in the CARE or FERA programs[5] are "economically vulnerable customers" for the purpose of evaluating under Section 745(c)(2) whether economically vulnerable customers, in general, might suffer "unreasonable hardship" under default TOU rates.[6]

A. The PD's Definition of "Economically Vulnerable" Is Necessary to Shape the Data Gathering From TOU Pilots for the 745(c)(2) Determination

Repeating an argument previously raised in briefs, TURN and UCAN argue that because the CARE program is cited elsewhere in the law, *i.e.*, Section 739.1, but not in Section 745, that "[t]he Legislature could have referenced the CARE eligibility criterion if it had intended to limit consideration of unreasonable hardship in § 745(c)(2) ***only to CARE customers***."[7] This speculative interpretation is incorrect for two reasons. First, the PD defines economically vulnerable customers to include customers enrolled both in CARE *and* FERA and thus the PD already does not limit consideration of unreasonable hardship to ***only*** CARE customers. Second, the omission of any specific reference to CARE enrollment in Section 745(c)(2) does not prohibit the Commission from supplying a definition of its own choice. The fact that a definition of "economically vulnerable customers" is not included in Section 745(c)(2) is indicative of legislative intent to defer the definition of the "economically vulnerable customers" to the Commission's judgment. It does not indicate that the Legislature intended to preclude the adoption of a definition based on enrollment in the CARE program, or any reason to conclude that the Legislature intended to prohibit a definition that is partially based on the Commission's largest discount rate program that is specifically designed to provide relief to economically vulnerable customers. Indeed, the PD has appropriately elected to define "economically vulnerable customers" in reliance on a Commission-approved low-income program created by statute (CARE) and a Commission-approved low-income program *not* created by statute (FERA). This is not legal error.

There is no need to expand the PD's definition to include customers who are ***eligible***, but not ***enrolled*** in the CARE/FERA programs nor any basis to conclude that the Legislature intended this eligibility criterion alone to define "economically vulnerable customers." As TURN itself notes, 95% of eligible CARE customers were enrolled

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[4] PD, at p. 9. The PD also notes that impact of TOU rates on very low income CARE and FERA customers can be derived by studying the results of both the Opt-in and Default TOU pilots.

[5] PD, at p. 33; Conclusion of Law 1.

[6] "Where the CPUC is required to interpret the P. U. Code, its interpretation (even if invalid) will not be disturbed unless 'it failes to bear a reasonable relation' to the statute's purposes and language." *So. Cal. Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 796.

[7] *See,* TURN Opening Comments, at p. 4 (emphasis added); Opening Comments of UCAN, at p. 6.

in the CARE program in 2012.[8] Thus, it is clear that studying through the default TOU pilots any hardships on CARE/FERA customers related to TOU rates will provide representative results for the 5% of customers who are eligible but are not enrolled in the CARE program. Expanding the PD's definition to CARE-eligible customers who are not enrolled would result in significant concerns with respect to feasibility, practicality, and level of administrative oversight.[9, 10] The CPUC must interpret the phrase "economically vulnerable customer" so as to achieve a feasible, practical result that avoids undue administrative effort by the IOUs[11] with reasonable assurance that it will be able to make the required 745(c)(2).

The Commission has at times employed practical and administratively reasonable solutions to fill in gaps left by the Legislature such as those left by Section 745(c)(2). During the industry restructuring process, the Legislature enacted laws to provide a 10% rate reduction to residential and small commercial customers. Section 331(h) defined small commercial customers as customers with maximum peak demands of less than 20 kW. SCE's Schedule GS-1 applies to commercial customers with demands that must be less than 20 kW. ***For the purpose of providing the 10% discount*** the Commission adopted SCE's definition that only Schedule GS-1 customers would be eligible.[12] SCE also serves Schedule GS-2 customers, who generally have demands in excess of 20 kW, but some of whom had demands that were less than 20 kW for all 12 months. In a subsequent complaint case, these GS-2 customers contended that they should also receive the 10% discount as "small commercial customers." The Commission determined that GS-2 customers could not receive the 10% discount, citing practical considerations and other reasons why GS-2 customers with peak demands of less than 20 kW could not receive the 10% discount.[13] By analogy, the Commission may properly conclude that ***for the purpose of the required Section 745 assessment of default TOU impacts***, economically vulnerable customers are defined as customers enrolled on

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[8] *See,* TURN Opening Comments, p. 5, footnote 10.

[9] If an income threshold lower than CARE/FERA eligibility were defined as "economically vulnerable" for potential ***exclusion*** from default TOU, the IOUs would face significant implementation challenges. The IOUs' billing systems do not include customer income information, which is often inconsistently reported and changes over time.

[10] The PD correctly focuses on a working definition of economically vulnerable customers for the purpose of the TOU pilots that is also "reasonable and administratively efficient to implement." PD, pp. 8 – 9; Concl. of Law 1, p. 33; O. P. 2, p. 35.

[11] *See* PD, at pp. 8 - 9.

[12] D.97-09-056, cited at page 43, D.03-08-036. The Commission also agreed that the 10% discount could be provided as a bill credit because it was "simple to administer because it does not require redesigning residential and small commercial rates…." See, D.03-08-036, p. 40.

[13] SCE noted that the Commission used its expertise and understanding, as well as practical and administrative concerns, in approving the Schedule GS-1 definition of small commercial customers. D.03-08-036, pp. 18 – 19. The Commission stated that "we were exercising some discretion with respect to the approval of the cost recovery plans because of gaps in the statutory framework." See D.03-08-036, p. 39. In *Anchor Lighting v. Southern California Edison*, the Court of Appeal court stated that the "CPUC was entitled to fill in the [statutory] gap by accepting SCE's formula." *See* 142 Cal. App. 4th 541 (2006), B184613, p. 12.

CARE/FERA. However, customers who are eligible for the CARE/FERA programs, but who do not enroll, are not necesasarily defined as economically vulnerable — just like the Commission properly concluded that GS-2 customers whose demands were under 20 kW, but not served on Schedule GS-1 were not small commercial customers eligible to receive the 10% discount.

B. The Determination of "Unreasonable Hardship" for 745(c)(2) Should Be Based on Multiple Data Analyses

TURN argues that measures such as energy burden, energy insecurity and disconnection rates should be evaluated using the data from the TOU pilots, and the results can be used to determine which income groups may be "economically vulnerable" and/or suffer "unreasonable hardship" due to the imposition of default TOU rates.[14] The Joint IOUs agree that appropriately designed pilots will ensure adequate sample populations and segments that will provide the data necessary to evaluate any hardships imposed by TOU rates on "economically vulnerable customers."

For example, the CPUC can take into consideration possible effects on customers that may be eligible for CARE/FERA. Because the pilot will identify customers by income strata, it will allow analysis of customers from the overall random sample who are below the CARE and FERA income thresholds. This will allow the CPUC to identify any customers who are eligible for, but not enrolled in CARE/FERA and to then examine results for these customers. The Commission might assume, for example, that non-enrollees would have slightly lower disposable incomes because they do not receive the CARE/FERA discount on their energy bills, deducting the otherwise applicable CARE/FERA discount from the otherwise applicable disposable income.

TURN's assertions about ways it believes the utilities might be able to exclude economically vulnerable customers with less administrative burden have no factual basis. For example, while TURN suggests that the IOUs could default customers onto different rates based on "census tract income data,"[15] TURN never raised this idea for consideration by the TOU Working Group and it runs contrary to TOU Working Group discussions to date.

TURN repeatedly asserts that the legislature's intent was "to evaluate the impact of TOU rates on all economically vulnerable customers in hot climate zones."[16] But the statute does not say "all" it just requires the CPUC to evaluate whether default TOU rates would cause unreasonable hardship on economically vulnerable customers. This can be accomplished through evaluation of a representative sample.

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[14] *See,* TURN Opening Comments, at p. 6.
[15] See, TURN Opening Comments, at pp. 8-9.
[16] *See*, TURN Opening Comments, at p. 7.

III. THE PD CORRECTLY LIMITS ITS SECTION 745(C)(2) EXAMINATION TO SENIORS LIVING IN HOT CLIMATE ZONES

UCAN argues that the PD errs in limiting its 745(c)(2) examination to seniors living in hot climate zones, rather than all seniors anywhere.[17] Only UCAN made this argument. The PD's reasoning is correct and consistent with the CPUC's RROIR Phase 1 decision,[18] but can be amplified if necessary by more extensive citation to the Joint Utilities detailed legal briefs on this issue.[19] For one thing, UCAN's "last antecedent rule" argument is belied by the legislative history, showing that a Committee Hearing Report discussing it included commas that showed the legislators understood the phrase "in hot climate zones" to modify both "economically vulnerable customers" and "senior citizens."[20] Indeed the entire legislative history shows an almost single-minded focus on impacts in hot areas. That said, the pilots will collect data on seniors from all climate zones, so that information will be available if the CPUC wishes to go beyond the statute's strict requirements. There is no need to change the PD on this point.

IV. CFC'S ARGUMENT FOR SETTING UP A PROCESS FOR TRACKING SENIORS NOW IS PREMATURE AND WOULD BE UNDULY EXPENSIVE

CFC argues that a process for tracking seniors needs to be set up *now*.[21] The Joint IOUs strenuously disagree. Tracking of seniors at this time is premature and, because it may ultimately prove unnecessary, would be unduly expensive. Utilities should only be required to implement such a process if it is demonstrated to be needed (i.e., if the CPUC both found unreasonable hardship for seniors *and* decides to exclude them from default TOU rather than using another mitigation.[22] At most, the PD should be revised to require the IOUs to work with the TOU Working Group *to be prepared* to potentially implement a procedure for tracking and obtaining such information, if necessary.

V. CONCLUSION

The IOU's respectfully request that the CPUC adopt the PD with the minor modifications proposed in the Joint Utilities Opening Comments.

Dated: September 6, 2016

Respectfully submitted,
/s/ Thomas Brill
Thomas R. Brill on behalf of
PG&E and SCE

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[17] *See,* Comments Of Utility Consumers' Action Network (UCAN) on the Proposed Decision on the Requirements Of California Public Utilities Code § 745 For Default Time-Of-Use (TOU) Rates For Residential Customers, at p. 4.
[18] D.15-07-001, p. 133 (see definitions set forth in table).
[19] Joint Utilities Opening Brief on Section 745 issues at p.13; Joint Utilities' Reply Brief at pp. 5-6.
[20] Joint Utilities Opening Brief on Section 745 issues, at p. 12, lines 4 – 13, and footnote 39.
[21] *See,* Opening Comments of CFC, at p. 4.
[22] *See,* Joint Utility Opening Comments, at pp. 5-8.